

## REMARKS/ARGUMENTS

In the Office Action mailed June 26, 2008, claims 1, 2, and 4-10 were rejected. Additionally, claims 3 and 11-14 were objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicants hereby request reconsideration of the application in view of the below-provided remarks. No claims are amended, added, or canceled.

### Allowable Subject Matter

Applicants appreciate the Examiner's review of and determination that claims 3 and 11-14 recite allowable subject matter. In particular, the Office Action states that claims 3 and 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Additionally, while the Office Action provides a statement of reasons for the indication of allowable subject matter, the Office Action's statement is directed to specific aspects of certain claims and not necessarily all of the claims. Applicants note that the Office Action's comments may have paraphrased the language of the claims, which recite allowable subject matter, and it should be understood that the language of the claims themselves set out the scope of the claims. Thus, it is noted that the claim language should be viewed in light of the exact language of the claim rather than any paraphrasing or implied limitations of the allowable subject matter.

### Claim Rejections under 35 U.S.C. 103

Claims 1, 2, and 8-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg et al. (U.S. Pat. No. 6,788,657, hereinafter Freiberg) in view of Higuchi et al. (U.S. Pat. Pub. No. 2002/0012383, hereinafter Higuchi). Additionally, claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg in view of Setty et al. (U.S. Pat. Pub. No. 2003/0103469, hereinafter Setty) and further in view of Reefman et al. (U.S. Pat. Pub. No. 2002/0163455, hereinafter Reefman). However,

Applicants respectfully submit that these claims are patentable over Higuchi, Setty, and Reefman for the reasons provided below.

Independent Claims 1, 8, 9, and 10

Independent claim 1 recites “an estimate, for a given service, of a difference between the specific predetermined error rate requirement and a measured current error rate” (emphasis added). Claims 8, 9, and 10 recite similar limitations.

In contrast, the combination of Freiberg and Higuchi does not teach using an estimate. The Office Action acknowledges that Freiberg does not teach an estimate of a difference between a specific predetermined error rate requirements and a measured current error rate. Hence, the Office Action relies on Higuchi as purportedly teachings an estimate, as recited in the claim.

As explained in Applicants’ previous response, Higuchi relates to controlling power according to a difference between a detected reception error rate and a target reception error rate. Higuchi, page 7, claim 6, lines 3-8. While Higuchi describes a difference, Higuchi does not teach obtaining the difference using an estimate. It is this specific lack of teaching of obtaining the difference using an estimate that forms the basis of Applicants’ traversal.

While Higuchi describes using a difference, Higuchi does not explain how the difference is obtained. This lack of teaching—regarding how the difference might be obtained—cannot be used to conclude that the difference is obtained using an estimation procedure. There may be many ways to generate the difference described in Higuchi, including ways that do not involve using an estimate of the difference. Since Higuchi is silent as to how the difference is obtained, Applicants submit that this silence and lack of teaching is insufficient to support the Examiner’s conclusion that the difference may be obtained using estimation. Moreover, even if it were possible to obtain the difference described in Higuchi using some type of estimation procedure, the fact remains that Higuchi does not teach any type of estimation procedure to obtain the difference.

Furthermore, it appears that the reasoning in the Office Action attempts to disregard the plain meaning of the term “estimate” by referring to the content that is estimated, rather than acknowledging that an estimate is obtained using an estimation

procedure. In other words, it appears that the Office Action focuses on the “difference” between the detected and target reception error rates, without taking into account how the difference might be obtained. The mere discussion of a difference in Higuchi does not address how the difference of Higuchi might be achieved. Hence, Applicants’ previous arguments simply explained that the difference of Higuchi might be obtained using actual measurements or some other procedure that does not involve estimation or an estimate. In this way, since Higuchi does not describe using estimation or an estimate to obtain the difference between the detected and target reception error rates, there is no disclosure in Higuchi to support the conclusion that Higuchi purportedly teaches an estimate of the difference.

Therefore, to clarify Applicants’ previous arguments, Higuchi merely teaches a difference, but does not teach how the difference is obtained. Since Higuchi does not teach how the difference might be obtained, Higuchi fails to specifically teach using estimation to obtain the difference. Since Higuchi fails to teach using estimation to obtain the difference, Higuchi fails to teach an estimate of the difference.

Consequently, Applicants respectfully assert that claim 1 is patentable over the combination of Freiberg and Higuchi because the combination of Freiberg and Higuchi does not teach all of the limitations of the claim. Specifically, Higuchi does not teach an estimate, for a given service, of a difference between the specific predetermined error rate requirement and a measured current error rate, as recited in claim 1. Accordingly, Applicants respectfully submit that claim 1 is patentable over the combination of Freiberg and Higuchi because the cited references do not teach all of the limitations of the claims. Similarly, Applicants respectfully submit that claims 8, 9, and 10 are also patentable over the combination of Freiberg and Higuchi for similar reasons.

#### Independent Claim 4

As a preliminary matter, the rejection of claim 4 is improper because the Office Action does not establish a *prima facie* rejection for claim 4. In order to establish a *prima facie* rejection of a claim under 35 U.S.C. 103, the Office Action must present a clear articulation of the reason why the claimed invention would have been obvious. MPEP 2142 (citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_ (2007)).

Here, the Office Action fails to explain why the limitations of claim 4 would have been obvious because the Office Action does not fully address all of the limitations of the claim. In particular, the Office Action fails to articulate reasoning to show how the cited references might address “a step of estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements” (emphasis added). Although the Office Action acknowledges this language in the claim, the Office Action states that neither Freiberg nor Setty expressly discloses estimating code block size coding gains and using the estimated values as recited in the claim. More specifically, the Office Action states that neither Freiberg nor Setty discloses using an estimated value for the purpose recited in the claim.

The Office Action proceeds to assert that Reefman purportedly teaches estimating code block size coding gains. However, the Office Action does not show or make an assertion regarding how the estimated values might be used, other than to recognize that Reefman uses the compression ratio or coding gain estimate as an input control signal to a parameter control device. Using the estimated value as an input control signal, as asserted in the Office Action, is insufficient to address the recited limitation of using an estimated code block size coding gain to derive individual quality factors matching specific predetermined error rate requirements. In other words, even if the Office Action addresses generating an estimate, the Office Action nevertheless does not address using the estimate as recited in the claim.

Therefore, the Office Action fails to establish a *prima facie* rejection for claim 4 because the Office Action does not assert or show how the cited reference might teach a step of estimating code block size coding gains related to the transport data blocks for deriving individual quality factors matching said specific predetermined error rate requirements, according to the language of the claim. Accordingly, Applicants respectfully submit that the rejection of claim 4 under 35 U.S.C. 103(a) should be withdrawn because the Office Action fails to establish a *prima facie* rejection.

Dependent Claims

Claims 2, 3, 5, 6, and 11-14 depend from and incorporate all of the limitations of the corresponding independent claims 1, 4, 8, 9, and 10. Applicants respectfully assert claims 2, 3, 5, 6, and 11-14 are allowable based on allowable base claims. Additionally, each of claims 2, 3, 5, 6, and 11-14 may be allowable for further reasons.

**CONCLUSION**

Applicants respectfully request reconsideration of the claims in view of the amendments and remarks made herein. A notice of allowance is earnestly solicited.

Respectfully submitted,

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